

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY ALBERT BAGGETT,

Plaintiff,

v.

CITY OF MERCED, *et al.*,

Defendants.

Case No. 1:24-cv-00892-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Anthony Albert Baggett ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. Individuals detained pursuant to California Welfare and Institutions Code § 6600 *et seq.* are civil detainees and are not prisoners within the meaning of the Prison Litigation Reform Act. *Page v. Torrey*, 201 F.3d 1136, 1140 (9th Cir. 2000). This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 29, 2024, Plaintiff initiated this action in the Sacramento Division of the United States District Court for the Eastern District of California. (ECF Nos. 1, 2.) The case was transferred to the Fresno Division on August 2, 2024. (ECF No. 4.) On August 5, 2024, the Court granted Plaintiff's motion to proceed *in forma pauperis* as a non-prisoner. (ECF No. 6.) The order granting Plaintiff's *in forma pauperis* motion was returned on August 13, 2024 as

1 “Undeliverable, Not at Facility.”

2 Plaintiff has not filed a notice of change of address or otherwise communicated with the
3 Court.

4 **II. Discussion**

5 Plaintiff is required to keep the Court apprised of his current address at all times. Local
6 Rule 183(b) provides:

7 **Address Changes.** A party appearing in propria persona shall keep the Court and
8 opposing parties advised as to his or her current address. If mail directed to a
9 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and
10 if such plaintiff fails to notify the Court and opposing parties within sixty-three (63)
days thereafter of a current address, the Court may dismiss the action without
prejudice for failure to prosecute.

11 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to
12 prosecute.¹

13 According to the Court’s docket, Plaintiff’s address change was due no later than October
14 21, 2024. Plaintiff has failed to file a change of address and he has not otherwise been in contact
15 with the Court. “In determining whether to dismiss an action for lack of prosecution, the district
16 court is required to weigh several factors: (1) the public’s interest in expeditious resolution of
17 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;
18 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
19 drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks
20 and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re*
21 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006).
22 These factors guide a court in deciding what to do, and are not conditions that must be met in
23 order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation omitted).

24 Given Plaintiff’s failure to respond to this Court’s order, the expeditious resolution of
25 litigation and the Court’s need to manage its docket weigh in favor of dismissal. *Id.* at 1227.
26 More importantly, given the Court’s apparent inability to communicate with Plaintiff, there are no

27 _____
28 ¹ Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 other reasonable alternatives available to address Plaintiff's failure to prosecute this action and his
2 failure to apprise the Court of his current address. *Id.* at 1228–29; *Carey*, 856 F.2d at 1441. The
3 Court will therefore recommend that this action be dismissed based on Plaintiff's failure to
4 prosecute this action.

5 **III. Conclusion and Recommendation**

6 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
7 district judge to this action.

8 Furthermore, the Court HEREBY RECOMMENDS that this action be dismissed, without
9 prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b).

10 These Findings and Recommendations will be submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
12 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may
13 file written objections with the court. The document should be captioned "Objections to
14 Magistrate Judge's Findings and Recommendations." **Objections, if any, shall not exceed**
15 **fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page**
16 **number if already in the record before the Court. Any pages filed in excess of the 15-page**
17 **limit may not be considered.** The parties are advised that failure to file objections within the
18 specified time may result in the waiver of the "right to challenge the magistrate's factual
19 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter*
20 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: October 31, 2024

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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